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Federal Communications Commission
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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| In the Matter of | ) | |
| Petition for Declaratory Ruling and Contingent Petition for Preemption of Requests of U S West Communications, Inc. for Interconnection Cost Adjustment Mechanisms | ) | CC Docket No. 97-90<br>CCB/CPD 97-12 |

# COMMENTS OF WORLDCOM, INC.

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April 3, 1997

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## COMMENTS OF WORLDCOM, INC.

WorldCom, Inc. offers these comments to support with minor qualifications the above styled Petition filed on February 20, 1997, by Electric Lightwave, Inc., McLeodUSA Telecommunications Services, Inc., and NEXTLINK Communications, L.L.C. (Petitioners).

## I. BACKGROUND

WorldCom, through its wholly owned subsidiary, MFS Communications, is licensed as a competitive local exchange carrier ("CLEC") in five western states where U S West is the dominant incumbent local exchange carrier ("ILEC"). As Petitioners explain, in each of these states, U S West has asked the state utility commission to approve an Interconnection Cost Adjustment Mechanism ("ICAM") to enable U S West to recover "one time or start-up extraordinary charges for network rearrangements mandated by the Telecommunications Act of 1996 ["TA96"] for the convenience and

use by USWC's competitors, and to facilitate USWC's existing customers' ability to choose a different local exchange service provider."[1] U S West proposes to recover these costs either from its emerging competitors, the CLECs, or from its other customers. U S West further asserts it has no other way to recover these costs. Petitioners and WorldCom disagree, but with somewhat differing interpretations of TA96 and of the appropriate roles of this Commission and the various state commissions.

WorldCom's comments are presented in three sections – Part II addresses various public policy interpretations and jurisdictional concerns surrounding this matter. Part III addresses several costing principles and cost recovery. And, Part IV addresses appropriate relief.

## II. PUBLIC POLICY CONCERNS

U S West's multiple ICAM filings and Petitioners' pleading both are founded on incomplete interpretations of TA96. U S West asserts pricing principles and cost recovery "rights" that are inconsistent with TA96 while Petitioners seek both a ruling that U S West cannot recover certain costs and preemption of as yet non-existent state commission orders that might allow recovery of those costs in a manner inconsistent with TA96. These concerns are addressed below.

### A. U S West Errs in Interpreting TA96 Public Policy Objectives

U S West characterizes the costs it wishes to recover as one time or start-up charges for network rearrangements mandated by TA96 for the convenience and use

[1] Application of U S West Communications, Inc. for the Interconnection Cost Adjustment Mechanism, *Petition for Declaratory Ruling and Request for Agency Action*, filed by U S West before the Public Service Commission of Utah on January 3, 1997 ("Utah Petition") at ¶ 8

of USWC's competitors[2]. If U S West truly believes that TA96 mandated anything for the benefit of competitors rather than for the benefit of consumers, it needs once again to read the preamble of TA96 - "AN ACT To promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." Thus, TA96 is expressly intended to break the local service monopoly of ILECs for the benefit of competition and consumers, not competitors.

Nonetheless, TA96 is replete with examples of Congressional action to strike a balance between the interests of individual carriers and the greater interests of consumers. For example, all carriers (ILECs, CLECs, IXCs, and CMRSs) must coordinate network planning and design to assure interconnectivity of networks, services and devices[3]. Both incumbent and competitive LECs must permit resale, implement number portability, provide dialing parity and access to rights-of-way and establish reciprocal compensation arrangements[4]. ILECs further are required to provide interconnection, access to unbundled network elements and physical collocation "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."[5] Yet, the only mention of funding in Section 251 is the requirement for all carriers to pay the costs of numbering administration on "a competitively neutral basis."[6] U S West implies it is entitled to recovery of certain "new" costs of compliance with TA 96 and states it has no way to recover its costs of complying with the interconnection portions of TA96 other than its ICAM[7].

U S West is flat out wrong. It conveniently ignores Section 251 (c)(1) which expressly requires ILECs to negotiate agreements that define the terms and

[2] *Ibid.* If these start-up charges instead enable U S West to offer new or improved services to its end user customers, ILECs should not be pay the costs.
[3] 47 USC Section 251 (a) and Section 256
[4] 47 USC Section 251 (b)
[5] 47 USC Section 251 (c)
[6] 47 USC Section 251 (e)
[7] Utah Petition at ¶ 12

conditions pursuant to which the ILEC will provide each of the above capabilities (and others). This subsection requires that the negotiations be conducted in "good faith in accordance with Section 252". Section 252 describes in considerable detail the procedures to be followed to establish these agreements. First, they may be arrived at through voluntary negotiations, mediation or arbitration. Second, they must incorporate certain costing standards. And, third, they must be approved by the appropriate state regulatory commission. The process is very clear – U S West has the opportunity both to identify and to negotiate recovery of any of its costs for interconnection related network rearrangements that were undertaken for the convenience and use by USWC's competitors.

WorldCom believes U S West did just that. It proposed both recurring and non-recurring charges for every aspect of the interconnection agreements that it negotiated with MFS and other CLECs. In fact, the CLECs objected to almost all the rates U S West proposed as being too high and not cost based. In each state where WorldCom participated, the state commissions reviewed the negotiated provisions and arbitrated the contested provisions prior to approving our interconnection agreements. In every state, some pricing issues were set aside for later formal reviews. Those proceedings continue in most states. So, U S West's assertion that it has no way to recover its costs simply is not true. Whether the rates that ultimately are established are sufficient[8] is a matter left under the Act to negotiation and state review. Neither this Commission nor any state commission has any obligation to save U S West from its own failure to identify its costs and argue its case.

### B. Petitioners Raise Multiple Other Policy Concerns

WorldCom does not agree with Petitioners' assertion that U S West is precluded from recovering those costs truly created by its compliance with Section 251.

Rather, WorldCom believes U S West cannot be guaranteed such recovery. U S West had the opportunity to recover those costs and will have other opportunities every time interconnection agreements are renegotiated or amended. Whether the costs are appropriately identified and/or recovered elsewhere will remain part of the negotiation process. Business planning and market competition also will affect cost/revenue relationships. These are part of the new market realities that U S West seems as yet unwilling to acknowledge.

Petitioners raise three other policy issues that also require attention. First, the Commission should address whether an ILEC may unilaterally impose a charge on interconnecting ILECs. WorldCom interprets Section 251 to establish negotiated agreements as the only method for an ILEC to impose costs related to its Section 251 obligations on interconnecting carriers. While the interconnecting carriers individually might agree to take some, or even all, of these capabilities pursuant to tariff, or the arbitration terms may impose a tariff, an ILEC may not impose a tariff for carrier interconnection outside the negotiation/arbitration process. That option is acknowledged in TA96 at Section 252 (f) where ILECs are permitted to file a Statement of Generally Available Terms ("SGAT")[9]. But, that subsection concludes with a provision that submission of a SGAT "shall not relieve a Bell operating company of its duty to negotiate the terms and conditions of an [interconnection] agreement under section 251."[10]

Second, U S West asserts it should recover these Section 251 related costs through the Universal Service fund. The Commission should declare both here and in CC Docket 96-45 that costs incurred by an ILEC to implement Section 251 are not to be

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[8] For example, negotiators and states must consider whether the expenses were prudent and timely, whether they were undertaken to implement interconnection agreements and whether they also permit U S West to offer other new, or improved, services.

[9] WorldCom recognizes that some BOCs may attempt to satisfy their Section 271 obligations by filing a SGAT as a substitute for interconnection agreements in any state where competitors have not requested interconnection. We will address in later forums the clear absence of any such states.

[10] 47 USC Section 252 (f)(5)

included as costs subject to recovery through the Universal Service mechanism. Unfortunately, WorldCom has no way of identifying whether such costs are covered in either of the costing models now being considered by the Commission as its basis for establishing the benchmark universal service rate level. There would seem to be a particular risk that these costs might be double recovered if they can be recovered both through negotiated agreements and included in the universal service model. The possibility that they are included at least in the Benchmark Cost Proxy Model is very real since U S West seems to advocate that as a way to recover its implementation costs and also is a sponsor of BCPM.

Third, the Commission should consider how best to prevent "sham" proceedings by ILECs. As Petitioners note, U S West has been particularly aggressive in pressing court challenges to arbitrated agreements and in pursuing additional revenue, like ICAM, in many jurisdictions. While WorldCom would be among the first to argue for U S West's right to contest any issue, we strongly encourage the Commission to step up to its offer to "stand ready to provide guidance ... regarding the statute" and "to act expeditiously on such requests for declaratory rulings."[11] As WorldCom has requested in a similar context[12], this Commission has plenary authority to adopt a declaratory ruling offering its expert agency opinion of the requirements of TA96 without adopting new regulations or preempting any explicit or possible state action. Declaratory rulings interpreting the requirements of TA96 should be rendered based on the representations filed in these proceedings. Such rulings would provide one venue in which to argue national public policy and would provide guidance to the individual states as they ponder the various ILEC requests. Such guidance might significantly simplify the issues to be addressed by the states. That in turn might hasten a decision that is consistent with TA96

[11] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order*, CC Docket 96-98, FCC 96-325, released August 8, 1996, ¶ 125

[12] MFS Communications Company, Inc., Petition for Preemption and Declaratory Ruling Regarding Geographical Deaveraging, CCB/CPD 97-1, filed December 30, 1996, and Reply Comments of WorldCom, Inc. in the same matter filed February 21, 1997.

and advances the public policy objectives of Congress by reducing or eliminating another potential barrier to competitive entry.

Prompt declaratory decisions also would reduce what is turning out to be another significant barrier to entry - the innumerable and never ending regulatory and legal proceedings that substantially increase the costs of and delay competitive entry. Declarations that can be tested once and applied nationally should substantially reduce "after the fact" Section 253 proceedings.

## III. COSTING ISSUES

Although WorldCom does not propose that the Commission has the duty to examine specific costs underlying arbitrated interconnection agreements,[13] the Commission nonetheless should be concerned about the costing methodologies implied by U S West's arguments. U S West already has proposed significant non-recurring costs associated with each of the unbundled network elements that CLECs (including the WorldCom subsidiaries that form MFS) may obtain from U S West. If those non-recurring costs don't cover implementation as well as operating costs, what costs are included? If the costs are for general network upgrades or allow U S West itself to offer new or improved services, they should not be charged to interconnecting carriers. Further, many of the costs seem to be prospective and, thus, impossible to verify and altogether speculative. The actual costs claimed so far, some $16 million region-wide[14], seem woefully insufficient to support the significant ICAM monthly recurring charges proposed by U S West.[15] Indeed, such costs seem particularly ill-suited to justifying any rate. Given the pendancy of the Eighth Circuit review of the costing provisions of

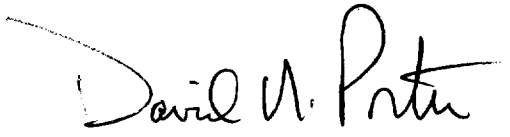
[13] That duty is reserved to the individual states unless a state fails to act - 47 USC Section 252 (c) and (e)
[14] Utah Petition at ¶ 5
[15] These costs in Washington range as high as $144,000 per month for interconnections arrangements, $35,000 per month for unbundled network elements and $9,000 per month for resale arrangements. These charges are in addition to the negotiated recurring and non-recurring rates for each arrangement, element or service and may dwarf these negotiated charges when a CLEC is just beginning business.

Commission's First Report and Order in CC Docket 96-98[16], now is likely not the best time to ask the Commission for further guidance on costing issues. WorldCom remains convinced the Commission will prevail in that proceeding and asks the Commission to consider refining its pricing rules to address these concerns after its authority is upheld.

## IV. APPROPRIATE RELIEF

The Commission should declare: that U S West has had an opportunity to recover its Section 251 related implementation costs; that U S West may impose costs on interconnecting carriers only through negotiated or arbitrated interconnection agreements or through a SGAT that has been voluntarily adopted by the interconnector; and, that U S West may not recover Section 251 related implementation costs through the evolving universal service funding processes.

Respectfully submitted,



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April 3, 1997

[16] Iowa Utilities Board et al. v. FCC, No. 96-3321, *Order Granting Judicial Review* (8th Cir., Oct. 15, 1996)

## CERTIFICATE OF SERVICE

I, Cecelia Y. Johnson, hereby certify that I have this 3rd day of April, 1997, sent a copy of the foregoing "Comments of WorldCom" by hand delivery, or first class mail, postage prepaid, to the following:

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